

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)
)
) NO. 3:10-cr-00260
)
 v.) JUDGE HAYNES
)
 ABDIFITH JAMA ADAN, et al)

MOTION IN LIMINE TO EXCLUDE PRIOR VICTIM WITNESS RAPE ACCUSATION

The United States of America, by and through the undersigned, hereby files this *motion in limine* seeking an order excluding Jane Doe One's (JD1) sexual assault allegations against third parties. Federal Rule of Criminal Procedure 412, the rape shield statute, as well as Sixth Circuit precedent, bars defendants from testing a victim witness' general credibility through the use of the victim witness's sexual assault allegations against third parties that the victim witness later withdraws. On November 19, 2007, JD1 reported to her social worker that her uncle had sexually assaulted her. Several months later, JD1 withdrew her allegation. To the extent that any Defendant seeks to use JD1's prior allegations to attack her general credibility, such tactics are proscribed.

The Sixth Amendment guarantees a criminal defendant the right to confront witnesses against him. See Davis v. Alaska, 415 U.S. 308, 315-16 (1974); Mayes v. Sowders, 621 F.2d 850, 855 (6th Cir. 1980). However, a trial court has the discretion to limit the scope of cross-examination based on concerns about “harassment, prejudice, confusion of the issues, witness

safety, or interrogation that is repetitive or only marginally relevant.” See King v. Trippett, 192 F.3d 517, 524 (6th Cir. 1999) (citing Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986)). In this way, the Confrontation Clause “guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” Delaware v. Fensterer, 474 U.S. 15, 20, 106 S.Ct. 292 (1985).

The recognition of cross-examination limitations is never more true than in cases involving sexual misconduct. Federal Rule of Criminal Procedure 412 limits the admissibility of evidence of a rape victim's past sexual behavior to three situations: when constitutionally required, when relevant and more probative than prejudicial on the source of semen or injury, and when relevant and more probative than prejudicial on the issue of consent. Fed. Rule Evid. 412; see United States v. Cardinal, 782 F.2d 34 (6th Cir. 1986). A victim witness's other allegations of sexual assault do not fall within Rule 412's exceptions.

The Sixth Circuit has explicitly held that Rule 412 prohibits the defense from cross examining a victim witness with the victim witness' other allegations of sexual assault that the witness later withdrew. United States v. Cardinal, 782 F.2d 34, 35-6 (6th Cir. 1986). In Cardinal, defendant argued that the victim witness's sexual assault allegations against other family members, that the victim later withdrew, should be used to test the victim witness's credibility. The Sixth Circuit rejected defendant's argument. Instead, the Sixth Circuit recognized the policy considerations underlying Rule 412 and stated, Rule 412's ““principal purpose ... is to protect rape victims from the degrading and embarrassing disclosure of intimate details about their private lives.” (Id. citing 124 Cong.Rec.H. 11944 (daily ed. Oct. 10, 1978) (statement of Rep. Mann)).

In addition, the Sixth Circuit has also recognized that the Confrontation Clause does not permit a defendant from using a victim witness's other allegations of sexual assault to be used to generally attack the victim witness's credibility. Boggs v. Collins, 226 F.3d 728, 737-738 (6th Cir. 2000) (finding cross-examination constitutionally compelled when it reveals witness bias or prejudice, but not when it is aimed solely to diminish a witness's general credibility); accord Vasquez v. Jones, 496 F.3d 564, 574 (6th Cir. 2007).

Here, JD1's prior accusations of sexual assault do not fall within any exception under Rule 412. Moreover, both Cardinal and Boggs prohibit the use of JD1's prior allegations of rape, particularly those against her uncle, to be used to attack JD1's general credibility. Accordingly, the Government requests an order excluding any use of JD1's allegations of sexual assault against third parties to attack her credibility generally.

CERTIFICATE OF SERVICE

I, hereby certify that a true copy of the forgoing was sent via the Court's electronic filing system or, if not registered, deposited in the United States mail to the following on this 4TH day of February 2012.

s/Blanche Cook
BLANCHE COOK
Assistant United States Attorney

Abdifitah Jama Adan (1) John P. Cauley 414 Bridge Street Franklin, TN 37064 (615) 790-2426 (615) 261-7070 (fax) john@johncauley.com	Abdifatah Bashir Jama (16) Joseph F. Edwards 1957 Benson Road Cookeville, TN 38506 (931) 537-9154 jedwardsjd@frontiernet.net
Abdullahi Sade Afyare (2) James A. Simmons Hazel Path Mansion 105 Hazel Path Hendersonville, TN 37075 (615) 824-9131 jas52@earthlink.net	Andrew Kayachith (17) John E. Nicoll Law Office of Nicoll & Nicoll 313 S Ramsey Street Manchester, TN 37355 (931) 723-7885 john.nicoll@nicoll-law.com
Ahmad Abnulnasir Ahmad (3) Thomas J. Drake, Jr. 405 1/2 31st Avenue North, Suite B Nashville, TN 37209 (615) 320-1717 (615) 320-1718 (fax) drakecourt@att.net	Abdigadir Ahmed Khalif (18) FUGITIVE - UNKNOWN LOCATION
Yahya Jamal Ahmed (4) James William Price, Jr. Price, Hill & Kolarich 201 Fourth Avenue, N, Suite 1800 Nashville, TN 37219 (615) 244-5772 jprice@pricehillkolarich.com	Bashir Yasin Mohamud (19) Bob Lynch, Jr. 222 Second Avenue, N, Suite 316 Nashville, TN 37201 (615) 255-2888 tdooley2@bellsouth.net

Abdikarim Osman Ali (5) (Defendant) Fugitive - IN UAE	Mustafa Ahmed Mohamed (20) Clayton M. Whittaker Mack & Wittaker 846 Oak Street Chattanooga, TN 37403 (423) 265-4736 (423) 265-4815 (fax)
Hassan Ahmed Dahir (7) Patrick T. McNally Weatherly, McNally & Dixon, PLC Fifth Third Center 424 Church Street, Suite 2260 Nashville, TN 37219 (615) 986-3377 (615) 635-0018 (fax) pmcnally@wmdlawgroup.com	Abdifatah Sharif Omar (22) Peter J. Strianse Tune, Entrekin & White AmSouth Center 315 Deaderick Street Suite 1700 Nashville, TN 37238 (615) 244-2770 pstrianse@tewlawfirm.com
Fadumo Mohamed Farah (8) Luke A. Evans Bullock, Fly, Hornsby & Evans P. O. Box 398 Murfreesboro, TN 37133 (615) 896-4154 bfh@outlook.com	Liban Sharif Omar (23) Gary R. Wolf Commerce at the Crossing Suite 205 250 Second Avenue South Minneapolis, MN 55401 (612) 333-6000
Idris Ibrahim Fahra (9) Jennifer L. Thompson 715 Crescent Road Nashville, TN 37205 (615) 320-4344 (615) 320-4159 (fax) nashvilleattorney@gmail.com	Mohamed Sharif Omar (24) Erik Herbert 117 Union Street Nashville, TN 37201 615-256-6009 (615) 259-2666 (fax) erikherbert@bellsouth.net
Yasin Ahmed Farah (10) Roger N. Taylor Taylor & Schechter, P.C. 305 14th Avenue, N Nashville, TN 37203 (615) 320-5577 (615) 320-5597 (fax) bo.taylor@305lawoffice.com	Hamdi Ali Osman (25) Jonathan E. Richardson Attorney at Law Quorum Financial Center 4121 Clarksville Pike, Suite 7 Nashville, TN 37218 (615) 891-7811 jrichardson@Jrichlaw.com

<p>Abdullahi Hashi (11) David L. Cooper Law Office of David L. Cooper, P. C. 208 Third Avenue, N, Suite 300 Nashville, TN 37201 (615) 256-1008 dcooper@cooperlawfirm.com</p>	<p>Haji Osman Salad (26) Patrick G. Frogge Bell, Tennent & Frogge, PLLC Bank of America Plaza 414 Union Street, Suite 904 Nashville, TN 37219 (615) 244-1110 (615) 244-1114 (fax) patrick@btflaw.com</p>
<p>Fatah Hashi (12) John G. Oliva 1308 Rosa L. Parks Blvd Nashville, TN 37208 (615) 254-0202 jgoliva@comcast.net</p>	<p>Bibi Ahmed Said (27) Michael David Noel 5115 Maryland Way Brentwood, TN 37027 (615) 373-5597 mdnoel02@bellsouth.net</p>
<p>Abdirahman Abdirazak Hersi (13) Hershell D. Koger 135 N First Street P O Box 1148 Pulaski, TN 38478-1148 (931) 424-0882 kogerlaw@hotmail.com</p>	<p>Ahmed Aweys Sheik (28) B.F. Jack Lowery Lowery & Lowery 150 Public Square Lebanon, TN 37087 (615) 444-7222 jdlowery@lowerylaw.com</p>
<p>Muhiyadin Hussein Hassan (14) Charles D. Buckholts 2400 Crestmoor Road Nashville, TN 37215 (615) 386-7118 (615) 232-3841 (fax) chuck@buckholtslaw.com</p>	<p>Yassin Abdirahman Yusuf (29) David I. Komisar 211 Printer's Alley Building, Suite 400 Nashville, TN 37201-1414 (615) 242-2675 david.komisar@prodigy.net</p>
<p>Dahir Nor Ibrahim (15) Jerry Gonzalez Jerry Gonzalez, PLC 2441-Q Old Fort Parkway, Box 381 Murfreesboro, TN 37128 (615) 360-6060 (615) 360-3333 (fax) jgonzalez@jglaw.net</p>	<p>Mohamed Ahmed Amalle (30) R. Lance Miller Lance Miller Law LLC 212 Madison Street, Suite 101A Clarksville, TN 37040 (931)802-6180 (931)551-5331 Cell lance@lancemillerlaw.com</p>